



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

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November 16th, 1998

Minutes of the November 16th, 1998, meeting of the Commission on Governmental Ethics and Election Practices held in Room 120, State Office Building, Augusta, Maine.

Present: Chairman Peter B. Webster; Members Linda W. Cronkhite, Harriet P. Henry, G. Calvin Mackenzie, and Merle R. Nelson; Director William C. Hain, III; Counsel Phyllis Gardiner; and Commission Assistant Melissa Caron.

Chairman Webster called the meeting to order at 9:00 a.m.

In keeping with the Commission's practice of addressing agenda items out of scheduled sequence in order to accommodate members of the public who may be present and have requested a Commission determination of their respective issues, the following agenda items were considered:

Agenda Item #6C: Late Semiannual Campaign Finance Report Filings (2)

William S. Linnell appeared on his own behalf to address the matter to the Commission and presented for the Commission's consideration a Trustee Summons dated July 19th, 1996, involving a preexisting obligation in the amount of \$5,000; and a letter dated March 24th, 1998, addressed to the Commission regarding a late filing by Cheaper, Safer Power PAC previously considered by the Commission. Mr. Linnell requested the Commission to waive the penalty in this case because of a "valid personal emergency," namely financial hardship, as evidenced by the two pieces of correspondence.

Members questioned Mr. Linnell regarding whether a lawsuit had kept the penalty from being paid; whether he had contacted the Commission staff for assistance; why it took him so long to file the delinquent reports; and his failure to file reports even if he could not pay any penalty that may be assessed. Mr. Linnell responded that he had been moving around during the period in question, that he was completely disorganized, his papers were not accessible, his bank accounts had been attached, that he had forgotten about the notices he acknowledged having received, and that he had not contacted the Commission staff until only recently. He simply did not have his previous campaign as a high priority and had expected the Commission to question his failure to file campaign reports in April when the PAC question was addressed.

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Mr. Mackenzie moved and Mrs. Nelson seconded to assess the full penalty less the amount due in July 1997, crediting Mr. Linnell for that period previously recognized as a period of personal disorganization. The penalty to be assessed under that circumstance would be \$4,135.00. After discussion, the motion was approved unanimously. Thereafter, Judge Henry questioned whether the Commission has any discretionary authority to suspend any portion of a penalty. Counsel Gardiner responded that a suspension may be made contingent upon some event, such as the agreement upon a mutually acceptable payment schedule. Mrs. Nelson recommended that an appropriate payment schedule be accepted because of the size of the penalty amount.

Agenda Item #7A: Quiet Man Coalition complaint against Citizens for a Healthy Portland

Chairman Webster recused himself from consideration of this matter. Mr. Mackenzie assumed the position of Acting Chair. Ms. Jadine O'Brien and Andrew MacLean, Esq. appeared on behalf of the respondents. Ms. O'Brien presented a history of the smoking-ban-in-restaurants referendum in Portland. Attorney MacLean questioned whether the Commission has jurisdiction to consider this matter arising out of a municipal referendum question. Even if the Commission does have jurisdiction, Attorney MacLean posited, Constitutional protections of political speech would protect the content of the communication in this case. Following a discussion on the issue of jurisdiction and the Constitutional protections associated with political speech, Mr. Mackenzie moved and Mrs. Nelson seconded that the Commission decline to conduct any further investigation into this matter. The motion was unanimously approved with Mr. Webster abstaining.

Thereafter, Mr. Webster resumed the position of Chair.

Agenda Item #2: Old Town Republican City Committee Late Campaign Finance Report Filings

Mr. Albert Duplessis, Chairman of the Old Town Republican City Committee appeared on behalf of the Committee and addressed the matters contained in the October 19th, 1998, letter submitted by Mr. Kenneth Moors, Committee Treasurer, namely that the Committee had previously inquired of the Party Committee about reporting requirements. The Committee had not been informed by the State Party Committee of the reporting requirements. After discussion, Judge Henry moved and Mr. Mackenzie seconded and it was unanimously voted to waive the full penalty based on the precedent cited in the staff recommendation contained in the Agenda, but that Commission Staff be directed to correspond with the State Party Committees regarding their statutory obligation to inform subordinate party committees of their respective reporting requirements.

Agenda Item #1: Minutes

The minutes of the October 14th, 1998 meeting were unanimously approved as submitted.



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Agenda Item #3: Electronic Filing

Mr. Hain reported no progress on the electronic filing project, the next step being completion of the Request for Proposals.

Agenda Item #4: Clean Election Act Regulations

Mr. Hain reported that the regulations had been approved by the Attorney General and the Secretary of State and are effective as of November 1st, 1998. Mrs. Nelson recommended that the regulations be made available in public libraries. Mr. Hain explained that each public library has been provided with an Internet-accessible computer and that the Commission's regulations will be posted on the Commission web site.

Agenda Item #5: Policy Statement on Legislative Attendance at Seminars

Mr. Hain reported that development of the policy statement is pending.

Agenda Item #6A: Late Campaign Finance Report by Ralph Coffman

Mr. Coffman did not submit a written statement or appear before the Commission as he had requested to do. After brief discussion, Judge Henry moved and Mr. Mackenzie seconded to assess the reduced penalty of \$138.40. The motion carried unanimously.

Chairman Webster announced a 10 minute recess at 10:35 a.m., following which the Commission reconvened at 10:45 a.m.

Agenda Item #6D: Staff-initiated Request for Reconsideration of Previously Assessed Penalty Against Ms. Barbara S. Holt

Mr. Hain briefed the Members of the history of this matter, including Ms. Holt's acknowledgment of responsibility to pay the penalty amount, and requested reconsideration by the Commission of the penalty amount based on the mitigating circumstances contained in correspondence and telephone conversations with Ms. Holt. After discussion of whether the original amount assessed reflected a reduction based on the Commission's practice in first violation cases, Mr. Hain advised that he would determine that and present the matter at the next meeting. Members also recommended that the Commission staff develop a policy statement with respect to payment of penalties on a reasonable payment plan proposed by respondents.

Agenda Item #7B: Complaint by City of South Portland against Management Research & Development Association

Commission Members again discussed the issue of Commission jurisdiction regarding municipal issues. Mr. Hain and Counsel Gardiner were directed to prepare a recommendation for the Commission's consideration at the December meeting regarding the legal issue of jurisdiction over complaints arising out of municipal elections. Mrs. Cronkhite questioned whether it would



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be appropriate for the Commission to consider the content of allegedly unethical communications based on the Commission's responsibility over issues involving ethics. Mrs. Nelson agreed and suggested further discussion on the issue. Chairman Webster suggested that Constitutional issues bear mentioning, and that the matter would be discussed more fully at the December meeting.

Agenda Item #8: 1996 Annual Report

Mr. Hain was authorized to have the annual report printed and made available for distribution, the Members having reviewed the draft provided to them.

Agenda Item #9: Ethics Seminar

Mr. Hain briefed Members regarding the mandatory ethics seminar for the new Legislature scheduled for December 1st, 1998. Chairman Webster and Members Mackenzie and Henry indicated they would be available to attend.

Agenda Item #10: Interaction with Joint Standing Committee on Legal and Veterans Affairs

Mr. Hain advised that he will be communicating with the Joint Standing Committee as soon as possible after the new Legislature is organized in order to identify issues of common interest to the Commission and the Joint Standing Committee.

Agenda Item #11: Draft Legislative Proposal

Mr. Hain advised that the legislative proposal that he is preparing based on the Commission's Study Report to the Committee in Fall 1997 will contain statutory amendments to address issues of jurisdiction, penalties, and Commission discretion, in addition to those proposals contained in the Report. Part of the process of addressing such legislation by the new Legislature and its committees will be the opportunity for the Commission to appear before the Joint Standing Committee to address its functions and explain the legislative proposal for the Committee's consideration.

Agenda Item #12: Informational Items

Mr. Hain briefed Members on the status of the staff's move from the State Office Building to the Public Utilities Commission building in late March 1999.

Agenda Item #13: Executive Session

Judge Henry moved and Mrs. Nelson seconded to enter into executive session for the purpose of discussing the two pending lawsuits against the Commission involving challenges to the lobbyist registration fees and the Maine Clean Election Act. A public observer, Mr. Mike Brown, Hometown News Service, questioned Chairman Webster regarding the Commission's authority



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to enter into executive session, to which Chairman Webster responded that the authority to exclude the public in appropriate situations is contained in 1 M.R.S.A. section 405(6)(E), and that the reason for doing so in this case was to protect privileged communications between attorney and client during the prosecution of pending litigation.

Upon conclusion of the discussion in executive session, Mr. Mackenzie moved and Mrs. Nelson seconded to go out of executive session.

Chairman Webster raised the matter of the expiration of terms of service of Commission Members as a result of a request from the Governor's appointments office. Chairman Webster reminded Members that his and Judge Henry's terms of service expire in 1999 and that Mr. Mackenzie previously had indicated his expectation to be on sabbatical leave and would be submitting his resignation in the summer of 1999 to accept an appointment to a teaching position overseas. Based on that collective situation, Chairman Webster requested Members to consider those circumstances and be prepared to discuss service issues at the December meeting so as to be able to respond to the request from the Governor's office.

On motion and unanimous agreement, the Commission adjourned at 12:02 p.m.

Respectfully submitted,

William C. Hain, III
Executive Director